TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

October Term, 1960.
No. 9 Original

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants,

THE UNITED STATES OF AMERICA and STATE OF NEVADA,

Interveners,

STATE OF UTAH and STATE OF NEW MEXICO,

Impleaded Defendants.

Additional Objections and Exceptions of Imperial Irrigation District and Palo Verde Irrigation District to Report and Recommended Decree of Special Master.

Come Now Imperial Irrigation District and Palo Verde Irrigation District and Make and File These Their Additional Objections and Exceptions to the Report and Recommended Decree of the Special Master Filed Herein.

Preface

In view of the magnitude of the trial record and the complexity of the issues resulting, it is believed that a general statement of the major issues plead and tried and the basic determinations of the Special Master objected and excepted to by the California defendants may be helpful to a better understanding of these objections and exceptions.

The issues plead and tried involved an accounting of all of the Lower Basin beneficial consumptive uses of Colorado River System water, including all tributary uses and especially those on the Gila River System.[1] This was upon the basis that in order to apply the provisions of Article III of the Colorado River Compact; the first paragraph of Section 4(a) of the Project Act; the provisions of the California Limitation Act and the obligation of the Mexican American Water Treaty of 1944, it is necessary that an accounting be had of all beneficial consumptive uses in the Lower Basin, wherever used.

The Master's Report and Recommended Decree is premised principally upon two concepts. The first is that there is and always will be plenty of water for all

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[1]Par. XXII, Pg. 26, Ariz. Complt.; Par. 8, Pg. 11, Cal. Answers; Par. 8, Pgs. 16-17, Ariz. Reply to Cal. Par. XIV, Pg. 18, Nev. Complt.; Pars. XXIV, Pg. 22 and XXXVI, Pg. 36, U. S. Intervention.

concerned in the Lower Basin and therefore an accounting is useless.[2] The second is that the only measure of Lower Basin uses is that of water stored in Lake Mead and only from the main stream from Lake Mead to the Mexican Boundary;[3] that this case and the rights of the states and agencies that are parties hereto do not involve any Lower Basin tributary uses and not even any uses from the main stream of the Colorado River from Lee Ferry down to the headwaters of Lake Mead; that none of the parties are chargeable with their uses from any tributary or from the main stream above Lake Mead;[4] that the Compact and any Compact accounting are irrelevant to the case;[5] and that priority of appropriation and equitable apportionment are irrelevent.[6]

It is to these basic concepts of the Master, as evidenced by the Report and Recommended Decree, and to the issues and incidents that the Master holds to flow therefrom that these California defendants object and except.

As a further statement of these California defendants' objections and exceptions, and explanation thereof, these defendants state:

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[2]Tr. Pgs. 23084 and 23092.

[3]M. Rpt. Pgs. 185, 226-227.

[4]M. Rpt. Pg. 183 *et seq.*, 226 *et seq.*, 242 *et seq.*, 317 *et seq.*

[5]M. Rpt. Pg. 177.

[6]M. Rpt. Pg. 138. (Passing for the moment the Master's holding as to priority of present perfected rights as of June 1929, M. Rpt. Pg. 152, footnote, and Pgs. 161, 234, 347 and 359.)

During the period of 1930-34 the Secretary of Interior pursuant to his General Regulation in the matter[1] contracted with California defendant agencies for delivery at designated diversion points in California from water stored behind Hoover Dam so much water as necessary to supply for beneficial consumptive use in California the aggregate annual amount of 5,362,000 acre feet.[2]

The Colorado River Compact[3] provides in Article VIII that present perfected rights to the beneficial use of waters of the Colorado River *System* are unimpaired by the Compact. Article II(a) defines the Colorado River *System* as that portion of the Colorado River and its *tributaries* in the United States. Article III(a) apportions from the Colorado River *System* in perpetuity to the Upper and Lower Basins, respectively, the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum which shall include all water necessary for the supply of "any rights which may now exist." Article III(b) provides that in addition the Lower Basin may increase its beneficial consumptive use of *such* waters by 1,000,000 acre feet per annum.

The Boulder Canyon Project Act[4] in Sections 8(a), 8(b) and 13(b) provides that notwithstanding anything to the contrary in the Act, the United States and those claiming under the United States and all contractees and users or appropriators of water shall be controlled by the Compact. Section 6 provides that

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[1]Cal. Ex. 1811; M. Rpt. Pg. 28.
[2]Ariz. Exs. 33, 34, 36, 38, 39 and 40, M. Rpt. Pg. 28.
[3]Ariz. Ex. 1; App. 2, Pg. 371 M. Rpt.
[4]Ariz. Ex. 7; App. 3, Pg. 379 M. Rpt.

Hoover Dam and the reservoir shall be used—for satisfaction of present perfected rights in pursuance of Article VIII of the Compact. Section 13(d) provides that the conditions and covenants referred to shall run with the land and be attached thereto as a matter of law.

The first paragraph of Section 4(a) provides for a six state Compact if California consents that the aggregate annual consumptive use of Colorado River water for use in California, including "rights which may now exist" shall not exceed 4,400,000 acre feet apportioned to the Lower Basin by Article III(a) of the Compact plus not more than one-half of any excess or surplus unapportioned by the Compact—such uses to be subject to the Compact. California accepted the provisions and agreed to the limitation on the conditions indicated.[5]

California has always claimed, as she does now, that the Compact is controlling. That the rights to the beneficial consumptive use of water in the Lower Basin relate to and involve all waters of the Colorado River System which includes all tributary uses in the Lower Basin. That uses of water as to rights which now exist and present perfected rights—as of 1929 wheresoever used in the Lower Basin—including tributary uses, must be charged as uses of Compact Article III(a) water uses. That all beneficial consumptive uses of water shall be charged to the state within which the use is made on the basis of actual uses at the site of use. That Arizona should be charged as against any rights to III(a) water for her rights and uses on the Gila River System and other tributaries existent as of 1929. That the law of prior appropriation of water

[5]Ariz. Ex. 14; App. 4, Pg. 397 M. Rpt.

applies interstate on the Colorado River System and is recognized by the Compact and Project Act, including the rule of equitable apportionment. That the California defendant agencies represent agricultural and domestic projects with early historic appropriations.[6] That these projects date from as early as 1877 and the latest from 1926, and their work have been constructed to fully use their contracted supplies and their agricultural and domestic economies are dependent thereon[7] and are entitled to priority and not parity with junior rights and contracts as the Master holds.

Arizona having refused until 1944 to ratify the Compact, procured that year a contract from the then Secretary of Interior[8] which, subject to availability under the Compact and Project Act, called for delivery to Arizona from Lake Mead of a maximum of 2,800,000 acre feet per annum for beneficial consumptive use, plus one-half of any excess or surplus unapportioned by the Compact less rights of Nevada, New Mexico and Utah. (Nevada has a contract for 300,000 acre feet per annum from Lake Mead.[9]) By Sections 7(d) and 7(1) uses above Lake Mead and from the main stream below Hoover Dam are to be charged *pro tanto* against Arizona's contract entitlement. By Section 7(h) Arizona agreed to recognize the right of the United States to contract with California agencies within the limits of the California Limitation Act and by

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[6]See Cal. Exs. 66A, 67, 68, 70-90, for appropriative claims to title to water rights.

[7]See Pgs. 44-47, Pgs. 46-53; Par. 2, Pg. 3, and Exs. A, B, and C, Calif. Ans. to Ariz. Bill of Complaint.

[8]Ariz. Ex. 32; App. 5, Pg. 399 M. Rpt.

[9]Ariz. Exs. 43 and 44, App. 6 and 7, Pgs. 409 and 419 M. Rpt.

Section 7(1) is agreed that present perfected rights are unimpaired by the Arizona contract. By Section 7(c) Arizona agreed that Lake Mead be used in satisfaction of perfected rights. Section 13 of the Arizona contract provides that the rights of Arizona to the waters of the Colorado River and its tributaries are subject to and controlled by the Compact. There is no specific reference in the Arizona contract as to *pro tanto* charge against Arizona for her uses on tributaries below Hoover Dam, including the Gila River.

The Nevada contracts[10] by Section 5a of the 1944 contract of Nevada charge Nevada *pro tanto* for tributary uses.

The Utah and New Mexico uses are all tributary uses.

The Report of the Special Master is premised on certain major and several companion determinations to which California objects and takes exception.

Among the major items to which California objects and excepts are the following:

1. The assumption, contrary to the evidence, that there is an adequate water supply for all parties concerned and that California's claims of shortage of safe annual yield are unsound.[11] The assumption and basis of the determination is typified by the Master's statement of his determination at the hearing in New York August 19, 1960 that he was morally certain that for the lifetime of our children and great-grandchildren that there would be an adequate supply for the Metro-

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[10]Ariz. Exs. 43 and 44.

[11]M. Rpt. Pgs. 102 *et seq.*, 113 *et seq.*

politan Project and its contemplated expansion[12] and had he not so believed he would have strained every legal document to try to prevent a shortage.[13] (NOTE: This would be despite Metropolitan's relatively low priority among the California agencies.)

2. The determination that the future water supply to the Lower Basin of main stream water is irrelevant and the refusal of the Master to determine and pass upon the safe annual yield in determining the rights of the parties.[14]

3. The holding that the Colorado River Compact, the doctrine of equitable apportionment and the law of appropriation are all irrelevant herein[15] with the consequences held to flow therefrom.

4. The holding that the uses of water on the tributaries in the Lower Basin, including the Gila River and the uses of or from the main stream of the Colorado River from Lee Ferry to the headwaters of Lake Mead are irrelevant and not subject to *pro tanto* charge against the right of the state using[16] and the holding that provisions of the Nevada and Arizona contracts for *pro tanto* charge or tributary uses are invalid.[17]

5. The holding that the Project Act, and especially the holding that this proceeding, relate only to the main stream of the Colorado River from the headwaters of Lake Mead to the International Boundary and that the

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[12]Tr. 23084.

[13]Tr. 23092.

[14]M. Rpt. Pg. 99 *et seq.*

[15]M. Rpt. Pg. 138 *et seq.*

[16]M. Rpt. Pgs. 177 *et seq.*, 183 *et seq.*, 226 *et seq.*, 240 *et seq.*, 323 *et seq.*, 345-346 Items (B) and (F).

[17]M. Rpt. Pgs. 201, 205, 207 and 210.

Compact has no application to this case or intrabasin to the Lower Basin and that the uses of main stream water above Lake Mead without accounting therefor or *pro tanto* charge against the decreed water to the using state are available to Arizona and Nevada.[18]

6. The holding that Congress by the Project Act, second paragraph of Section 4(a), intended to and did apportion the waters to which the Lower Basin is entitled to the use of and that the Secretary of Interior had the authority to and did apportion between the Lower Basin States the uses of water available and that said Section 4(a), second paragraph, did and does give to Arizona, in addition, all uses on the Gila River System.[19]

7. The Master recognizes that the Compact deals with both the tributaries and the main stream.[20] Despite this the holding is made that the Compact is irrelevant to this case[21] and is applicable purely interbasin[22]; has no application intrabasin in the Lower Basin[23]; that the Project Act is controlling[24] and that the Compact accounting of uses in the Lower Basin of Colorado River System water is not applicable in this case.[25]

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[18]M. Rpt. Pg. 225 *et seq.*, 183 *et seq.*, 173 *et seq.*, 345-346 Items (B) and (F).

[19]M. Rpt. Pgs. 179, 231 *et seq.*, 99 *et seq.*, 151 *et seq.*, 162 *et seq.*

[20]M. Rpt. Pg. 142 *et seq.*

[21]M. Rpt. Pg. 138 *et seq.*

[22]M. Rpt. Pg. 141.

[23]M. Rpt. Pg. 144.

[24]M. Rpt. Pg. 138.

[25]M. Rpt. Pg. 177 *et seq.*

8. The holding that regardless of any Compact classification of uses and regardless of when or how rights were initiated and regardless of the completion of the California projects, the rule to be applied to the rights of Lower Basin States and to use water is to be based on parity and percentage proration and not on any basis of priority.[26]

9. The holding that despite reliance on the Compact and Acts, and the then interpretations, the early rights of the California agencies or their contracts and the existence of their going projects and economies result in no priority or equity as against non-existent new projects.[27]

10. The Master recognizes that the law or priority of appropriation is the guiding doctrine in the arid western states[28] and is recognized by all the Colorado River Basin States.[29] However, the holding is that the law of prior appropriation is not to the same extent applicable in California[30] and that generally as applied here the Compact provisions as to appropriative rights are inapplicable and rejected[31] and that the Project Act renders appropriative rights inapplicable.[32]

11. The holding that as to the Gila River the inflow therefrom into the Colorado River was non-existent and, if existent, not available for use in California and

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[26]M. Rpt. Pg. 99 *et seq.*, 232 *et seq.*, 306 *et seq.* (perfected rights excepted).

[27]M. Rpt. Pgs. 100, 138, 152, 229, 233.

[28]M. Rpt. Pgs. 326, 140.

[29]M. Rpt. Pg. 22.

[30]M. Rpt. Pg. 22.

[31]M. Rpt. Pg. 196.

[32]M. Rpt. Pgs. 152, 229 *et seq.*

not appropriated by California agencies[33] and no accounting of its uses as a use of III(a) or other Compact Water is required and accountability is removed by the Project Act.[34]

12. The holding that "present perfected rights" or existing rights or appropriative rights are limited to actual diversions and uses of specific quantities of water applied to a defined area or a particular use.

That if this holding implies that where appropriation proceedings are duly had for a given intended project; the works necessary for the irrigation of the project are built with due and reasonable diligence considering the magnitude of the project; water is brought and is available to and is being used on the project—all within the limits of the original appropriation and intent—that rights to the full development of the project are not firm and perfected to the extent of need therefor—then it is submitted the implied holding is in error.[35]

13. The holding that issues were not joined and the case was not tried and evidence was not received of the tributary uses in Nevada, Utah, New Mexico and Arizona as to existing rights of 1929 and as to future tributary uses and the failure and refusal to find on the issue of the priority in time and amount of such uses[36] and the failure and refusal to find and determine the III(a) and other tributary Compact uses of water in the Lower Basin as to the several state parties herein.[37]

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[33]M. Rpt. footnotes Pgs. 179 and 184; and Pg. 229.
[34]M. Rpt. Pg. 232.
[35]M. Rpt. Pg. 307 *et seq.*; 346 Item (g).
[36]M. Rpt. Pg. 240 *et seq.*, 323.
[37]M. Rpt. Pg. 177 *et seq.*, 240 *et seq.*, 317 *et seq.*, 325.

14. The holding that evidence was not presented as to water uses in Arizona on the basis of beneficial consumptive use and that figures are not available for return flow from Arizona uses[38] and the failure and refusal to find and determine the beneficial consumptive use of Arizona on the Gila and other tributaries,[39] and the holding that beneficial consumptive use is not measurable as to tributary uses.[40]

15. The failure and refusal of the Master to find on all material issues necessary to conclusions of law and the findings of the Master contrary to the admitted issues in the pleadings and contrary to the evidence herein and the making of Conclusions of Law unsupported by the evidence and contrary to the law and in direct conflict with issues admitted in the pleadings.

16. The Master erred in disregarding the pleadings and the issues admitted therein[41] and in deciding the issues on the basis of the proffered amended pleadings of Aribona,[42] which the Master excluded as pleadings and as to which California was not permitted to meet the new issues,[43] and in denying California's application to reopen the case for additional evidence on the new issues raised by the Report and the new offered but rejected pleadings of Arizona.[44]

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[38]M. Rpt. Pg. 126 *et seq.*

[39]M. Rpt. Pg. 149.

[40]M. Rpt. Pg. 149, Footnote 17.

[41]M. Rpt. Pg. 3.

[42]M. Rpt. Pg. 136.

[43]Note: California objected to amendments by Arizona and sought, if they were to be allowed, an opportunity to meet the issues. The new pleadings were not proffered until August 13, 1958, M. Rpt. Pg. 370, Tr. 13611 *et seq.*, and Tr. 22558 and Cal. Exs. 7301-7306 and 7302A-7306A.

[44]M. Rpt. Pgs. 3-4.

17. The Master's Report is so drafted as to make it impossible to distinguish between the recitals of the opinion and matters that are intended as Findings of Fact or Conclusions of Law. As a matter of precaution reference is here made to those items designated as Findings or Conclusions or Recommended Decree. Exception is taken to the following:

(a) The Conclusions, Pg. 115, M. Rpt.

(b) The Conclusions 1 and 2, Pg. 342, M. Rpt.

(c) Items of the Recommended Decree numbered I(A) (B) (C) (F) (G) Pgs. 345-6; II(A) (2) Pgs. 346-7; II(B)(1) through II(B)(6); II(C)(1)(2) Pg. 350; III Pgs. 353-354; V(C) Pg. 358; VI Pg. 359; VIII(B) Pg. 360; and VIII(C) Pg. 360.

18. The holding of the Master relative to the western boundary of the Colorado River Indian Reservation and in the Master's definition of the West bank of the Colorado River in connection therewith.[45]

19. The Master's recommended provision placing the operation of a part of the Colorado River System in the hands of the Secretary of Interior instead of a Commission or Commissioner as suggested by California and Nevada.[46]

20. The holding and interpretation of the Master with respect to his claimed application of priority of appropriation and as applied to "perfected rights."[47]

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[45]M. Rpt. Pg. 269 *et seq.*, Pg. 274 *et seq.*

[46]See Cal. proposed Findings Vol. 1, Par. IX, Pgs. 24-26 and Cal. Opening Brief Pg. 199. Also see Nevada Conclusions 34-35, Pgs. 77-78 and Pg. 167 Nevada Opening Brief.

[47]M. Rpt. Pg. 234 *et seq.*

21. The holding that the Compact operates only interbasin.[48]

22. The holding that the Compact is a ceiling on appropriations.[49]

In view of the magnitude of the record in this case, a minute specification of all items of rulings during trial and of failures to find on material facts would exceed any useful set of objections and exceptions. It is the intent by these objections and exceptions to object and except to all rulings, opinions, findings, conclusions and the provisions of the recommended Decree that are adverse to California and objection and exception is so taken.

The footnote references are not intended to be by way of limitation and are intended only as illustrative and for convenience.

Respectfully submitted,

FOR IMPERIAL IRRIGATION DISTRICT:

By HARRY W. HORTON,
Chief Counsel,

R. L. KNOX, JR.,
Counsel,

HORTON, KNOX & CARTER,

FOR PALO VERDE IRRIGATION DISTRICT:

By FRANCIS E. JENNEY,
Chief Counsel,

STANLEY C. LAGERLOF,
Special Counsel,

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[48]M. Rpt. Pg. 141 *et seq.*, Pg. 230 *et seq.*

[49]M. Rpt. Pg. 147 *et seq.*